Supreme Court of the United States.

OCTOBER TERM, 1904.

GEORGE A. BARTLETT,
APPELLANT,
v.
THE UNITED STATES.

No. 259.

APPEAL FROM THE COURT OF CLAIMS.

STATEMENT OF THE CASE.

Appellant, while disbursing clerk of the Treasury Department, duly appointed, qualified and bonded as such, was employed by the Secretary of the Treasury under a certain letter of appointment dated November 27, 1891 (Record, p. 4), as disbursing agent for such funds as might be advanced to him from time to time on account of appropriation for Post Office, Washington, D. C. The duty of disbursing the indicated funds was by law imposed upon the Secretary of the Treasury; appellant was employed by the Secretary to make the indicated disbursements in the clear understanding that he would be compensated therefor; he gave no bond under said employment as disbursing agent for the Post Office, Washington, D. C., and took no oath of office as such; the work was specific and did not

embrace the idea of duration or permanency, but began and ended with the construction of the Washington Post Office building. Appellant disbursed two millions four hundred and fifty thousand seven hundred and ten 10-100 dollars ($2,457,710.10), as such disbursing agent, not as disbursing clerk of the Treasury Department, which disbursement was reasonably worth three-eighths of one per centum upon the sum so dispersed, or nine thousand one hundred and ninety 20-100 dollars ($9,190.20) for which sum suit was brought in the Court of Claims.

Assignment of Errors.

Appellant assigns the following errors of the Court below, to wit:

1st. In holding that statutory authority is necessary to give validity to the contract between the United States and appellant.

2d. In failing to hold that the contract between the United States and Appellant is enforceable in the courts.

3d. In holding that the Secretary of the Treasury required appellant to perform the duties of disbursing agent for the Post Office, Washington, D. C.

4th. In holding that appellant's employment as disbursing agent for the Post Office, Washington, D. C., devolved upon the appellant duties germain to his regular duties as disbursing clerk of the Treasury Department and identical therewith.

5th. In failing to hold that the office of disbursing clerk of the Treasury Department is distinct in its duties from the employment of appellant as disbursing agent for Post Office, Washington, D. C., under the letter of the Secretary of the Treasury dated November 27, 1891 (Record, p. 4).

6th. In holding that the law cast upon the collector of the port of Georgetown, D. C., the duty of disbursing agent for the Post Office, Washington, D. C.

7th. In failing to render judgment in favor of appellant as prayed.

Brief of Argument.

No legislative authorization was required to empower the Secretary of the Treasury to contract with appellant as set out in findings of fact 2 and 3 (Record, pp. 4 and 5); such power is incident to the general sovereignty of the United States.

Dugan *v.* The United States, 3 Wheaton, 172.
United States *v.* Tingey, 5 Peters, 114.
United States *v.* Bradley, 10 Peters, 343.
Cotton *v.* United States, 11 Howard, 229.
United States *v.* Maunce *et al.*
2 Brock. 96; opinion by Ch. J. Marshall.

The duties of appellant as disbursing clerk of the Treasury Department are such as the Secretary of the Treasury may prescribe. They are not otherwise defined by law. The Secretary of the Treasury could not prescribe the duties of disbursing agent for the Post Office, Washington, D. C., as part of or additional to the duties of appellant as disbursing clerk of the Treasury Department. On the contrary the Secretary separates the former from the latter by the terms of appellant's appointment as disbursing agent for Post Office, Washington, D. C.

Revised Statutes, U. S., Sections 173, 174 and 176.

The City of Washington, in the District of Columbia, the place of the location of the public work, was not the place

of the location of the port of Georgetown, in the District of Columbia, for the purpose of making disbursements for the Post Office building at the City of Washington. No collector of customs was located at the City of Washington, the place of the public work.

Sections 2550, 2551 and 3658, Revised Statutes, U. S.
Act of Congress approved February 11, 1895, 28th Stats. 650.

Appellant is entitled to recover under the authority of:
Converse *v.* United States, 21 Howard, 463.
United States *v.* Brindle, 110 U. S. 688.
United States *v.* Saunders, 120 U. S. 126.

Argument.

The appointment of appellant by the Secretary of the Treasury under date of November 27, 1891 (Record, p. 4), is not an appointment to an office; appellant gave no bond and his duties were not continuing; they began and ended with the construction of the indicated building; a mere employment was conferred upon appellant under and by virtue of the contract evidenced by the letter of appointment, the acceptance thereof and performance of service thereunder. Compensation to appellant was an essential element in the transaction. Appellant has performed his part of the contract and this suit is brought to enforce performance on the part of the Government, for neither may depart from the terms agreed upon without the consent of the other. The law imposed the duty of making the disbursement upon the Secretary of the Treasury, and it is contended the Secretary acted within his authority in employing appellant to perform the service which the Secre-

tary could not perform with his own hand, and in attaching to such performance the incident of compensation. Even if the Secretary of the Treasury had no power to pay compensation as agreed, his contract is enforceable in the courts. The power of the Secretary to contract in this case is a power incident to his office. The law imposes no limitation upon the power of the Secretary to contract which ought to preclude claimant from recovering. His power to pay need not be considered. That question is not in this case.

Appellant was not bound to accept the appointment of disbursing agent for the Post Office, Washington, D. C. He was not required by the Secretary of the Treasury to perform the service; on the contrary, he was induced, in the expectation of compensation, to perform the service, and he assumed the grave responsibility of the disbursement of this very large sum of money as an employment independent of his duties as disbursing clerk of the Treasury Department. The duties of disbursing clerk of the Treasury are prescribed by the Secretary of the Treasury; they are not defined by law; they are subject to the order of the Secretary or of the Chief Clerk of the Department acting under the authority of the head of the Department; had the Secretary of the Treasury required appellant to disburse the money in payment for the construction of the Washington Post Office as part of his duties as disbursing clerk, that would raise a different question; but the Secretary of the Treasury did nothing of that kind; on the contrary, he appointed appellant specifically to the employment of an agent separate and distinct from his employment as disbursing clerk. It is submitted the Secretary's letter of appointment can properly have no other interpretation; as such disbursing agent appellant did not perform the

duties of any other office; he did not discharge the duties which belong to any other officer or clerk; the services were not "extra" or additional to his ordinary duties as disbursing clerk; the payment promised was not "additional" pay or an "extra allowance," but was compensation for the performance of a separate and distinct duty from that of disbursing clerk of the Treasury.

But it is urged that statutory authority for the employment of appellant is found in Section 3658 of the Revised Statutes of the United States, which provides as follows:

> "Where there is no collector at the place of the location of any public work specified in the preceding section the Secretary of the Treasury may appoint a disbursing agent for the payment of all moneys appropriated for the construction of any such public work, with such compensation as he may deem equitable and just."

The "preceding section" referred to in the section quoted authorizes collectors of customs to act as disbursing agents for the construction of post offices and certain other public buildings.

The City of Washington, in the District of Columbia, which is not a port of entry, is not the place of the location of the collector for the port of Georgetown; the City of Washington, the location of the place of the public work for which disbursements were made by appellant, is a place different from the port of Georgetown. The law defines the collection district wherein Georgetown is the port of entry as follows:

> SEC. 2550 (Rev. Stats.). There shall be in the District of Columbia one collection district as follows: The district of Georgetown; to comprise all the waters

and shores of the Potomac river within the State of Maryland and the District of Columbia from Pomonkey creek to the head of the navigable waters of that river; in which Georgetown shall be the port of entry.

SEC. 2551. There shall be in the district of Georgetown a collector.

The Post Office, at Washington, D. C., is neither located at Georgetown, nor on the waters or shores of the Potomac river; the place of its location is the City of Washington, which was, in fact, at the time of the employment of appellant for which he seeks recovery, a separate municipality from Georgetown, and so continued down to February 11, 1895 (28th Stats. 650).

Respectfully submitted.

J. M. VALE,
For Appellant.